

REMARKS

Reconsideration of the application is requested.

Claims 1, 4-44, and 46-66 are now in the application. Claims 1, 4-16, 44, and 53 are subject to examination and claims 17-43, 46-52, and 54-66 have been withdrawn from examination. Claims 1, 4-16, 44, and 53 have been amended. Claims 2, 3, and 45 have been canceled to facilitate prosecution of the instant application.

Under the heading "Claim Rejections – 35 USC § 102" on page 2 of the above-identified Office Action, claims 1-16, 44, 45 have been rejected as being fully anticipated by International Publication WO 01/59737 A1 under 35 U.S.C. § 102(b). Applicant respectfully traverses with regard to claims 2 and 9.

Claims 1, 15, 16, and 44 have been amended to better define the invention. Support for the changes can be found by referring to claim 2 and to the translated specification at page 11, line 30 through page 12, line 12 and to Fig. 12, which shows the chamber with the central monitoring zone 1207 where the sample is illuminated. Support for the other changes to the claims can be found in each respective claim as previously presented.

Claims 1, 15, 16, and 44 now specify that the presence of particles is determined, while canceling out influences on the first signal and on the second

signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal.

Page 14, lines 10-11 of WO 01/59737 A1 teach determining the presence of particles by comparing a ratio of signals. A subtraction is not taught or suggested. Furthermore there is no teaching related to changes that occur in a chamber that could effect the measurement signals, and there is no teaching related to canceling out these changes.

Applicant additionally notes that for cancelation purposes, a ratio is not comparable to a subtraction. Let us consider two measured signals that are each influenced by the same noise X (for example, due to build up in a measurement chamber) so that we obtain a first measurement signal represented by $(A+X)$ and a second measurement signal represented by $(B+X)$. Subtracting the two signals totally cancels out the influence of the noise and results in, for example, $(A+X) - (B+X) = A-B$. However, in the ratio $(A+X) / (B+X)$, the noise X influences the result in different degrees depending on the relative magnitudes of A, B, and X. The influence of the noise X on the output is not canceled.

Under the heading "Claim Rejections – 35 USC § 103" on page 7 of the above-identified Office Action, claim 53 has been rejected as being unpatentable over International Publication WO 01/59737 A1 under 35 U.S.C. § 103(a).

The invention as defined by claim 53 is not suggested for the reasons given above with regard to the teaching in WO 01/59737 A1 and the limitations in claim 16.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1, 15, 16, or 44. Claims 1, 15, 16, and 44 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on one of the independent claims.

In view of the foregoing, reconsideration and allowance of claims 1, 4-16, 44, and 53 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Please charge any fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Sterner LLP, No. 12-1099.

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Respectfully submitted,

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MPW:cgm

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